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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JOHN HARDNEY,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

B219712

(L.A.S.C. No. BH005738)

OPINION AND ORDER
GRANTING PEREMPTORY
WRIT OF MANDATE

ORIGINAL PROCEEDING; petition for writ of mandate. Peter Espinoza and Patricia Schnegg, Judges. Petition granted.

John Hardney, in pro. per., for Petitioner.

No appearance for Respondent.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Ryan K. Schneider, Deputy Attorney General for Real Party in Interest.

We hold that, where the petitioner relies on the granting of an extension of time within which to file a reply, and, through no fault of his own, the petition is ruled upon prior to the expiration of the extended time period, the matter should be reconsidered.

FACTS

John Hardney, an inmate at California State Prison, Los Angeles County, located in Lancaster, claims that prison guards handcuffed and beat him. He unsuccessfully sought relief administratively. After exhausting his administrative remedies,¹ on January 16, 2009, Hardney filed a petition for writ of habeas corpus in the Los Angeles Superior Court, claiming “‘torture,’ ‘fraud,’ and ‘brutality’ by prison officials at CSP-LAC, where petitioner was brutally assaulted on 3 occasions in a period of 10 months, from January 2007, thru October 2007, resulting in serious injuries including ‘two’ surgeries.”

On March 2, 2009, the Honorable Peter P. Espinoza ordered the warden of the Lancaster prison to file an informal response to Hardney’s petition.² On April 23, the warden filed an informal response. On July 13, the Honorable Patricia Schnegg granted Hardney 60 days to respond to the warden’s informal response. A few days later, on July 28, Judge Espinoza denied Hardney’s petition on its merits.

Judge Espinoza considered a document, which Hardney denominated as supplement and which set forth issues not raised in the original petition, to be Hardney’s reply to the opposition to his petition. Judge Espinoza states in the minute order: “On January 16, 2009 petitioner filed a 167 page partially hand written petition for a Writ of

¹ The February 10, 2009 Director’s Level Appeal Decision that Hardney includes as an exhibit shows that Hardney appealed the determination that he had committed a battery on a peace officer by kicking the officer.

² On April 21, after Hardney was moved to prison in Corcoran in Kings County, Judge Espinoza denied Hardney’s petition (in which he asked that the Corcoran prison officials be ordered to provide him his records) without prejudice to filing in Kings County “since petitioner is not and was not incarcerated in Los Angeles County.”

Mandate/Prohibition which the court chose to consider as a petition for a writ of habeas corpus since it concerned complaints about prison conditions and conduct that were absolutely mandated, according to petitioner, but in fact allowed for discretionary conduct by prison staff. [¶] Respondent, in his informal response, categorized the complaints into 8 separate grounds. (Response pages 3–8) The Court incorporates by reference as though fully set out grounds A through H of the response. And denies relief to petitioner for the reasons stated in grounds A through H. Petitioner filed what should have been his informal reply to the informal response on July 2, 2009. But instead of replying to the issues raised by respondent, petitioner filed a supplemental petition for a writ of habeas corpus ‘concerning’ a disciplinary hearing for the false allegations of Battery on Staff as alleged by staff from events of October 25, 2207. This pleading is stricken as being completely in-appropriate as an informal reply in this matter. As a new petition for habeas relief it would be denied as being untimely since it concerns events that occurred in 2007.”

In a subsequent minute order, dated September 30, 2009, Judge Espinoza notes that Hardney submitted papers after July 28, and those papers were not filed, but placed in the file.

Review of the superior court file shows that Hardney submitted a reply to the People’s opposition. His reply, dated September 11, 2009, is in the superior court file, but it is not stamped as “filed.”

Hardney asks this Court to order the superior court to consider his reply as timely filed and to allow him to file a supplemental brief.

In the informal response, the People acknowledge that Hardney was granted time until September 11 to file his reply, but Hardney chose to file a supplemental petition to raise additional (but stale) issues. The People assert that the superior court’s July 28, 2009 order was proper, because it set forth the reasons for the denial. The People do not state why, after Hardney was granted additional time to file his brief, the superior court ruled months before the expiration of that additional time period.

DISCUSSION

There is no dispute that Hardney is entitled to pursue relief via petition for writ of habeas corpus. “Denial or undue restriction of [reasonable access to the courts] is a denial of the due process of law guaranteed to state prison inmates by the Fourteenth Amendment. [Citations.] The primary function of the right is to insure full and timely judicial review, if desired by the prisoner, of his judgment of conviction; hence ‘the State has no power to deny a person the right to file in any court a petition or other document which purports to seek some remedy or relief relating to the offense for which he was imprisoned.’ [Citations.] A secondary function has developed coincident with the expansion of the scope of relief available to a prisoner on habeas corpus; in this respect the right of access permits the prisoner to bring to the attention of the courts alleged violations of his post-conviction rights ‘suffered as a direct result of incarceration,’ such as the infliction of cruel and unusual punishment in prison” (*In re Allison* (1967) 66 Cal.2d 282, 288-289.)

Ancillary to that right is a petitioner’s ability to rely on the orders of the court. Whether or not Hardney’s request for additional time to file his reply should have been directed to Judge Espinoza, rather than to Judge Schnegge (Cal. Const., art. VI, § 4; *People v. Konow* (2004) 32 Cal.4th 995, 1020; *Williams v. Superior Court* (1939) 14 Cal.2d 656, 662; *In re Alberto* (2002) 102 Cal.App.4th 421, 430; *In re Ramirez* (2001) 89 Cal.App.4th 1312, 1316–1317), the result was that a superior court order expressly gave Hardney additional time in which to file his reply. Through no fault of his own, Hardney’s petition was denied prior to the expiration of that extension. Thus, we exercise our equitable jurisdiction (Const. Art. 6, § 10) to remand the matter for the superior court to consider Hardney’s petition, the warden’s response, and Hardney’s reply and to issue a new order.

ACCORDINGLY,

As there is not a plain, speedy and adequate remedy at law, and in view of the fact that the issuance of an alternative writ would add nothing to the presentation already made, we deem this to be a proper case for the issuance of a peremptory writ of mandate “in the first instance.” (Code Civ. Proc., § 1088; *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1237–1238; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1240–1241; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222–1223; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) Opposition was requested and the parties were notified of the court’s intention to issue a peremptory writ. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

DISPOSITION

THEREFORE, let a peremptory writ issue, commanding respondent superior court, in Los Angeles Superior Court case No. BH005738, to: (1) vacate its order of July 28, 2009, ruling on Petitioner’s petition for writ of habeas corpus; (2) accept the September 11, 2009 response of Petitioner as timely filed; (3) as soon as is practicable, consider the matter on its merits; and (4) issue a new order.

NOT TO BE PUBLISHED

THE COURT:

ROTHSCHILD, Acting P. J.

CHANEY, J.

JOHNSON, J.